



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,295	02/10/2004	Yongsoo Chung	0876-0138.01	1148

7590 09/02/2004

Stephen B. Heller
Cook, Alex, McFarron, Manzo, Cummings & Mehler
Suite 2850
200 West Adams
Chicago, IL 60606

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No.		Applicant(s)	
	10/775,295		CHUNG ET AL.	
	Examiner		Art Unit	
	Helen F. Pratt		1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham, Jr. et al.

Graham, Jr. et al. disclose a composition as in claims 37 and 39, in which a single strength vegetable juice is treated with cation exchange to remove undesirable cations from the solution to produce a low-acid juice not from concentrate (col. 2, lines 33-50, col. 4, lines 45-50). The juice is low-acid as in claim 32 because the pH is 1.5 to 2.5 and not greater than 0.6% acidity, which can be neutralized to a palatable level as in claims 38 and 41 (col. 3, lines 50-54). The juice has a lower acidity than that of the first juice as the pH is 1.5 to 2.5 as in claims 33 and 36 (col. 4, lines 45-44). Claims 37 and 39 differ from the reference in the use of SOI for a particular juice and in the use of citrus juice (claims 32-35). However, as the standards of identity are known, it would have been within the skill of the ordinary worker to use such known standards if one wanted to produce such a juice. Nothing new is seen in the fact that citrus is claimed as the problem of reducing acidity is shown by the reference. The claims also differ from the reference in the particular process of making the product. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason

for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. Therefore, as the limitations of the composition has been shown, it would have been obvious to make such a product as shown by Graham, Jr. et al.

Claims 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dechow et al.

Dechow et al. disclose a reduced acid fruit juice with a reduced amount of acid (abstract) as in claims 37 and 40. The juice can be a not -from -concentrate juice (NFC) (col. 5, lines 25-34). Claims 37 and 40 differ from the reference in the use of a particular process to make the product. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. As the composition has been shown, it would have been obvious to make a juice as claimed.

Various acidities are disclosed in col. 12, lines 40-55 within the claimed range as in claims 38 and 41. Therefore, it would have been obvious to make a product with the claimed acidity.

Certainly, the acidity as in claims 39 and 42 would have been less than the initial strength juice flow as a juice has been treated as in claim 37 and 40. Therefore, it would have been obvious to treat juice to make a lower acidity as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-25-04

H. Pratt
HELEN PRATT
PRIMARY EXAMINER